



OVERVIEW OF THE MILITARY JUSTICE SYSTEM

MAJ Michelle E. Crawford
OTJAG, Criminal Law Division
Chief, Policy Branch



Outline of Instruction

- Reference
- Article 15, UCMJ – NJP
 - What it is
 - Who can issue
 - Proceedings
 - Punishments
 - Appeal
- Courts-Martial
 - Levels
 - Anatomy of a Trial
 - Effects of Sentencing
- Conclusion



MANUAL FOR COURTS-MARTIAL UNITED STATES (2002 EDITION)

The 2000 Edition of the MCM is a complete revision of the 2000 MCM incorporating all Executive Orders (EO) through 11 Apr 2002 (EO 12473 promulgating the 1984 MCM; EO 12484, 15 Nov 84; EO 12550, 19 Feb 86; EO 12586, 3 Mar 87; EO 12708, 23 Mar 90; EO 12767, 27 Jun 91; EO 12888, 23 Dec 93; EO 12936, 10 Nov 94; EO 12960, 12 May 95; EO 13086, 27 May 98; EO 13140, 6 Oct 99; EO 13262, 11 Apr 02). Copies of each Executive Order can be found in Appendix 25.



Nonjudicial Punishment Article 15, UCMJ



(1 of 2)

- An Article 15 is NOT a Federal conviction and the “Taking of the 15” is not an admission of guilt.
- It is a form of NJP that is designed to **correct, educate, and reform** a soldier w/o stigma of conviction.
- Appropriate for MINOR offenses



Nonjudicial Punishment Article 15, UCMJ



(2 of 2)

- Only CO can issue Article 15s. There are 2 types
 - Summarized (enlisted only) (DA Form 2627-1)
 - Limited Rights (no counsel)
 - Limited punishment (14 days ED/14 days restriction, and reprimand)
 - Formal (DA Form 2627)
 - Company Grade
 - Field Grade



Article 15 Hearing

- PURPOSE: Determine if the accused committed the offense, and if so, impose punishment.
- COMMANDER'S ACTIONS:
 - Consider the evidence presented
 - Decide guilt or innocence
 - Impose appropriate punishment
 - Explain rights to appeal
- STANDARD: CO must be certain of guilt BEYOND A REASONABLE DOUBT



Rights at Article 15 Proceedings

- Demand trial by court-martial
- Remain silent; present case to commander
- Examine evidence
- Appeal to higher commander
- Open or closed hearing (formal only)
- Consult with counsel (formal only)
- Spokesperson at hearing (formal only)



Formal Article 15 Punishments

- **Company grade**

- Reduction:
 - E-4 and below can get one grade reduction
- Restriction: 14 days and/or 14 days extra duty
- Forfeitures: 7 days pay
- Reprimand/Admonition

- **Field grade**

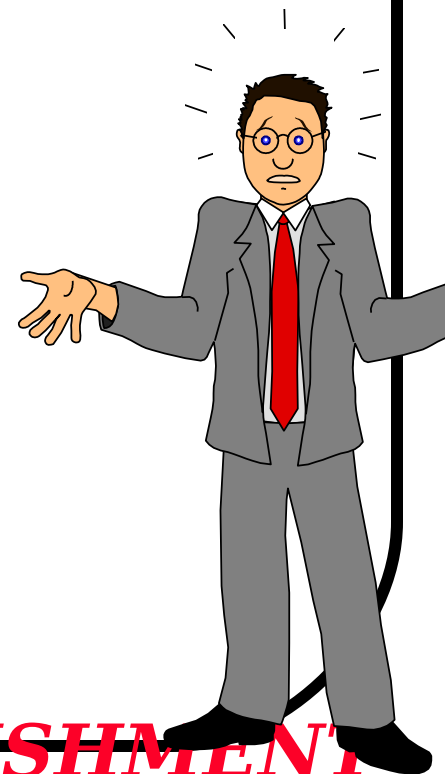
- Reduction:
 - E-4 and below can be reduced to E-1
 - E5 & E6 reduce 1 grade
- Restriction: 60 days OR, with extra duty, 45 days of each
- Forfeitures: $\frac{1}{2}$ one month's pay for 2 months
- Reprimand/Admonition



Article 15 Appeals



- PROCEDURE: **Written appeal** submitted thru imposing CO
- APPELLATE AUTHORITY--next higher cmdr
- ACTIONS ON APPEAL
 - Approve punishment
 - Mitigate (lessen)
 - Remit (return to status quo)
 - Suspend (probation)
 - Set aside (wipe out)
 - Change Filing Determination (NEW)
 - ***MAY NEVER INCREASE PUNISHMENT***





Judicial Punishment Trial by Courts-Martial



Levels of Court-Martial

- Summary Court-Martial (SCM)
- Special Court-Martial (SPCM)*
- BCD-Special Court-Martial (BCD-SPCM)*
- General Court-Martial (GCM)*

*These result in a Federal Conviction!





Anatomy of a Trial

(1 of 3)



- Investigation
- Pretrial Restraint (**MPOs, Confinement**)
- Preferral of Charges
- Article 32 Investigation (GCM Only)
 - **Role of Victims and Witnesses**
- Referral of Charges
- Pretrial Negotiations
 - **Consultation with Victims**
- Arraignment
 - Forum Selection
 - Motions
 - Pleas



Anatomy of a Trial

(2 of 3)



- Voir Dire
 - Opening Statements
 - Prosecution Evidence
 - Defense Evidence
 - Prosecution Rebuttal (Surrebutal as permitted)
 - Argument
 - Deliberation
 - Findings
- Victim/Witness Presence**



Anatomy of a Trial

(3 of 3)



- Prosecution Sentencing Evidence
 - Victim Impact Statements
- Defense Sentencing Evidence
- Rebuttal (Surrebuttal as permitted)
- Deliberation
- Announcement of Sentence
 - Effective dates, financial impacts, etc
- Post-Trial Submissions (Requests for Clemency)
- Action
- Appeal



Effects of Sentencing

(1 of 4)



- Reductions in Rank
 - Adjudged
 - Effective: earlier of 14 days after announcement of sentence OR Action
 - Automatic – Article 58a, UCMJ
 - Sentence that includes DD/BCD, confinement, or hard labor w/o confinement
 - Effective: at Action (approval of the sentence by the CA)
 - Deferment
 - On application of the accused
 - Until Action
 - May be rescinded



Effects of Sentencing

(2 of 4)



- Forfeitures
 - Adjudged
 - Effective: earlier of 14 days after announcement of sentence OR Action
 - Applies to pay and/or allowances accruing on and after the date on which the sentence takes effect
 - Automatic – Article 58b, UCMJ
 - Sentence that includes:
 - ✓ Confinement for more than 6 months or death OR
 - ✓ Confinement for 6 months or less PLUS DD/BCD/Dismissal
 - SPCM = 2/3 pay during period of confinement
 - GCM = all pay and allowances during period of confinement
 - Effective: earlier of 14 days after announcement of sentence OR Action



Effects of Sentencing

(3 of 4)

- Forfeitures (cont'd)

- Deferment

- On application of the accused
- Until Action
- May be rescinded

- Waiver

- For accused with dependents (no application of accused required)
- CA or other person taking action may waive any or all of automatic forfeitures
- Not to exceed 6 months
- Paid to the dependents

*** Maximize receipt of \$ by dependents: ***

✓ Deferment of adjudged and automatic forfeitures until Action

✓ Waiver for 6 months thereafter



Effects of Sentencing

(4 of 4)



- Discharges/Dismissal
 - Transitional Compensation
 - Program Administration Detailed instruction to follow from Ms. Sharon Llewellyn
 - USFSPA: 10 USC §1408(h) (per FMR – can't get both)
 - Applies if accused was retirement eligible (based upon years of service) at the time of C-M
 - Has eligibility to receive retired pay terminated as a result of misconduct involving abuse of a spouse or dependent child
 - Spouse or former spouse--
 - (i) was the victim of the abuse and was married to the member or former member at the time of that abuse; or
 - (ii) is a natural or adopted parent of a dependent child of the member or former member who was the victim of the abuse
 - If receiving \$, also eligible for medical, dental, commissary and PX



QUESTIONS??